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IN THE SUPERIOR COURT OF STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

v.

STEVEN CARROLL DEMOCKER,

Defendant.

Cause No. P1300CR20081339

Division 6

STATE'S RESPONSE TO DEFENDANT'S  
MOTION TO COMPEL A PROPER  
PROFFER AND TO PRECLUDE  
WITNESSES

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby submits its Response to Defendant's Motion to Compel Proffer and to Preclude Witnesses. The State of Arizona's Response is supported by the following Memorandum of Points and Authorities. The State incorporates its previous responses where applicable on the issues presented herein.

MEMORANDUM OF POINTS AND AUTHORITIES

The State provided the defendant on March 4, 2010 with a summary of witness' statements. Some of the State's witnesses will testify on their personal knowledge, which coincidentally, is the same disclosure statement made by the defendant for some of its witnesses. (See defendant's February 5, 2010 disclosure). Interestingly enough, the defense

1 team takes issue with the content of the State's proffered statements and has filed another  
2 motion to compel and/or preclude witnesses.

3 This response will go over and defend the proffered statements identified in  
4 defendant's instant motion, because that is not the law in Arizona. With regard to the  
5 application of Rule 15.1, the Supreme Court has expressly stated that the listing of names of  
6 witnesses for use in the State's case in chief is adequate notice to the defendant to be  
7 prepared for their testimony at any time and such testimony may be admitted on rebuttal.  
8 *State v Hatton*. 116 Ariz. 142, 568 P.2d 1040 (1977), (emphasis added).  
9

10 Moreover, the criminal discovery rules do not require the State to provide a word-by-  
11 word preview to defense counsel of the testimony of the State's witnesses. *State v Wallen*,  
12 114 Ariz. 355, 361, 560 P.2d 1262, 1268 (App.1977): see also *State v Guerrero*, 119 Ariz.  
13 273, 580 P.2d 734 (App.1978).  
14

15 The State at the last court hearing agreed to proffer witnesses statements within days  
16 of the hearing. The State fully complied with the informal agreement. The defense's  
17 dissatisfaction with the State's proffered statements demonstrates the hypocrisy of their  
18 position upon review of their first supplemental disclosure ("The First Disclosure ") only  
19 recently provided on February 5, 2010.  
20

21 The First Disclosure listed 8 witnesses. Four (4) of the defendant's witnesses (Thomas  
22 Bennington, Jenna Israel, Lou Nevins, and James Olney) will testify on "personal knowledge".  
23 Two (2) of the defendant's witnesses (James & Jody Hancock) will testify about divorce  
24 mediations between the defendant and victim and Doug Rader will testify about the defendant  
25 and victims tax return. The State has no other statements on defendant's recently disclosed  
26 witnesses. In another example the defendant identifies 4 experts, attaches their CV's but

1 attaches only one report from Chromosomal lab. Defendant identifies four (4) mitigation  
2 experts with CV's attached but, again, no reports.

3 The defendant then states that Thomas Bennington, Jenna Israel, Lou Nevins, James  
4 Olney, James Hancock, Jody Hancock and Doug Rader have been interviewed. The defense's  
5 investigator interviewed these witnesses, without notice to the State, between January 16, 2009  
6 & March, 2009. It took the defense team over a year after these witnesses were interviewed to  
7 disclose these witnesses and to date the defense still has not provided the State with copies of  
8 recorded interviews.

9  
10 There are more examples of untimely and incomplete disclosure by the defense team  
11 but for now the point has been made. Rules of disclosure apply evenly to both parties. Rule  
12 15.2(d) specifically states the defendant has to make disclosure 40 days from arraignment or  
13 within 10 days after the prosecutor's disclosure. The defendant has failed miserably in  
14 compliance with this rule. The defendant's late disclosed witnesses and non-disclosed expert's  
15 reports have delayed the State's ability to be prepared for trial in May.

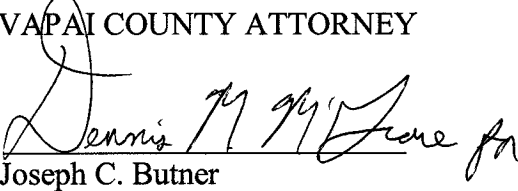
### 17 CONCLUSION

18 For what ever reason, the parties have had little if any professional communications  
19 attempting to resolve a single disclosure issue. Instead, the defense team has developed a  
20 strategy of litigating every single nuance that comes along. Their pleadings are filled with  
21 attack language attempting to place blame on the State for their inability to get prepared for  
22 trial. If the defense wished to resolve these discovery issues, many of the issues could have  
23 been resolved by simply picking up the telephone. The defendant's motion to compel the  
24 State to make a proper proffer for witnesses is without merit and is not supported by case  
25 law. It is requested that this court deny the defendant's motion in its entirety.  
26

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RESPECTFULLY SUBMITTED this \_\_\_\_ day of March, 2010.

Sheila Sullivan Polk  
YAVAPAI COUNTY ATTORNEY

By:   
Joseph C. Butner  
Deputy County Attorney

COPIES of the foregoing delivered this  
22nd day of March, 2010 to:

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